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RECORD OF ORAL HEARING
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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PETTER BRAGD, SHABIRA ABBAS,
and ANDREA SCHMID

Appeal 2009-012554
Application 09/651,127
Technology Center 3700

Oral Hearing Held: July 12, 2011

Before JENNIFER D. BAHR, STEFAN STAICOVICI, and
GAY ANN SPAHN, *Administrative Patent Judges*.

APPEARANCES:

ON BEHALF OF THE APPELLANT:

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The above-entitled matter came on for hearing on Tuesday, July 12, 2011, commencing at 1:15 p.m., at the U.S. Patent and Trademark Office.

600 Dulany Street, Alexandria, Virginia, before Victoria L. Wilson, Notary
Public.

P R O C E E D I N G S

THE USHER: Calendar number 14. Appeal number 2009-012554.
Mr. Boone.

JUDGE BAHR: Good afternoon, Mr. Boone.

MR. BOONE: Good afternoon.

JUDGE BAHR: You can get started whenever you're ready.

MR. BOONE: Afternoon. Are there any questions before I start?

JUDGE BAHR: No, I don't think so.

MR. BOONE: As just a basic summary, of course, I'm going to discuss some of the claimed invention some and that remains defined by the claims. I'm not trying to narrow or characterize that particularly but I do think that this, as relevant for the issues today, can be summarized as the embodiment of the claimed invention at least being an absorbent structure with at least two integrated layers of regenerated cellulose foam that partially penetrate into each other. And with that background of the claimed invention, I'll quickly turn to the Examiner's rejection, which is based on a combination of the -- I'll call it the Graef reference in view of the Rezai reference. The background on the Graef reference is that its teaching is a unitary stratified absorbent composite and these stratum are integrally connected and, of course, the stratum are also fibrous layers. And then Graef teaches how you would -- methods of integrating these fibrous layers that are essentially exclusive to a fibrous layer. With regard to the Graef reference as, I think, one of the things the Examiner agrees on and admits, is that the Graef reference does not teach

1 layers of the regenerated cellulose foam. So the Examiner, missing that
2 teaching, jumps to the Rezai reference, and the Rezai reference is teaching a
3 porous absorbent macro structure that's on a substrate and it's this teachings
4 related to the substrate that are below the porous absorbent macro structure
5 that the Examiner is particularly relying on. So with regard to the substrate,
6 the Rezai reference discloses, and this is a quote, "In another preferred
7 embodiment, the substrate layer comprises a cellulosic foam. In general, a
8 cellulosic foam will provide a higher liquid wicking rate over a longer wicking
9 distance than a cellulosic fibrous web. Preferably, the cellulosic foam is in a
10 compressed state so as to further improve its wicking and fluid distribution
11 properties." End of that quote. And the Rezai reference then also goes on to
12 characterize how the cellulose foam can be made, which is essentially a known
13 teaching in the art. So what I think is important from the Rezai reference is
14 that it's talking about a single layer, the substrate layer, that's underneath the
15 absorbent macro structure, and it's only talking about a property, essentially, of
16 the regenerated cellulose foam, not really a manner of making multiple layers
17 of such a foam. The Examiner, of course, as we have the Graef reference
18 which does not teach the layers of foam, the regenerated cellulose foam that
19 partially penetrate into each other, and says, well, you pull the use of the
20 cellulose foam from Rezai and modify Graef. Well, first, there is no teaching
21 of how you would do that. Neither Graef nor Rezai teach how to integrate two
22 cellulosic foam layers. As I mentioned, the Graef reference is how you would
23 integrate fibrous layers, and as was discussed in the prosecution history, one
24 embodiment that Graef teaches is using foam as a dispersion medium to
25 disburse the fibers in, then layer them and, then, of course, it sucks the foam

1 out. I think important to consider in that is, one, that that foam is not a
2 regenerated cellulose foam, it's just a dispersion medium, and at the end, you
3 have the final product is two fibrous layers that are commingling, not, you
4 know, a cellulosic -- regenerated cellulosic foam layer that's commingling. So
5 I think initially you can say that the result the Examiner is trying to get to is
6 speculative. She's taken a teaching related simply to a single layer of foam
7 versus fibers and one having a potential advantage over the other and applying
8 it to a teaching where you have these integrated fibrous layers and not giving
9 any reason or manner in which there would be -- how you would do it, so there
10 is no reasonable expectation of success. In the Examiner's Answer, the
11 Examiner attempts to try to justify this a little bit, noting that Rezai says its
12 cellulosic foam is made of regenerated rayon fibers. And that's simply, at best,
13 a red herring and really just an improper reasoning, as "made of fibers," of
14 course, as we explained in our Reply Brief, just means you take the fibers, you
15 soak them in sodium hydroxide and then you add, you know, salt and other
16 stuff so you're completely changing the fibers such that you are making a foam
17 and you're not having a fibrous layer. So that -- that alleged reason or basis for
18 this substitution is just not -- not any sort of reason one skilled in the art would
19 use to learn how to do what the Examiner is asserting. And then to follow on
20 this, as noted, the Rezai reference is talking about this substrate layer that's
21 underneath the absorbent macro structure. That's a single layer of foam. If
22 anything, the Examiner's assertion that it has the -- excuse me -- the higher
23 liquid wicking rate, if anything, which we don't admit to but, if anything, you
24 could say -- well, I don't think you can say but the Examiner may say that
25 would be a reason to, you know, modify the fibrous layer. Well, if so, that's

1 only to modify one of the fibrous layers, the bottom layer of the Graef
2 reference. The second layer in the Graef reference is taught to, you know,
3 rapidly withdraw liquid from the upper first stratum and then serve as a
4 temporary reservoir. But there is nothing with the Rezai teaching that would
5 suggest anything about the upper first stratum of the Graef reference, that that
6 should also be somehow a foam. So while there is no reason or teaching of
7 how to do this, there is also, even if you did make the substitution based on the
8 teachings, you don't end up with the claimed invention which, of course, is two
9 integrated foam layers which partially penetrate into each other. And that's --
10 you know, I hope -- is there questions or anything I can clear up?

11 JUDGE BAHR: I don't have any questions.

12 Do you? No.

13 I don't think so. I think we understand your position.

14 MR. BOONE: All right. Thank you for your time.

15 (Whereupon, the proceedings at 1:24 p.m. were concluded.)